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COMMISSION REPORT NO. 3D

TO THE LEGISLATIVE COUNCIL

TITLE 8 - COURTS AND JUDICIAL PROCEEDINGS ARTICLE

Transmitted herewith is Title 8, of the Courts Article. The title deals principally with jury selection. The revision is based almost exclusively on present Article 51 which was recently re-enacted in 1969 pursuant to an extensive study by the Maryland Bar Association. Because the statute was recently adopted, changes are generally in style only, although several sections are divided into shorter sections, a few completely rewritten, and several proposed for repeal.

The title is structured in four subtitles:

- (1) General Provisions
- (2) Juror Selection
- (3) Petit Juries
- (4) Penalties.

Subtitle 1 - General Provisions (p. 1)

The definition of "Circuit Court of a County" is included in subtitle 1 to avoid repetitious references to the Supreme Bench of Baltimore City when referring to the management of the juror selection process. It is the Supreme Bench, qua Supreme Bench, and not any one constituent part that manages juror selection in

Baltimore. At no time does the statute provide different treatment for the Supreme Bench.

A definition of "Court" is added to authorize the judge of any court in which a jury trial is being held to perform the functions required of him in the conduct of a jury trial.

No definition of "County" as including Baltimore City is necessary since Article 1, §14 defines county as including Baltimore City. Draftsmen in this State have long sought to avoid repetitious specific references to Baltimore City when drafting State-wide legislation. The Commission decided that since Article 1, §14 exists, it should be relied on.

Regarding §8-104 (p.3), the legislative council should note that despite passage of the 26th Amendment to the U. S. Constitution, which lowered the voting age to 18 years, the age for jury service remains at 21 years; Op. Atty. Gen. Council 9/8/71, Daily Record, 9/25/71. The Legislative/ is presently considering PF-118 (SB-55) which would lower the age for jury service to 18. It should be noted, however, that would not be unprecedented to have different ages for majority and for jury service. From before the Revolutionary War until 1969 the age for jury service was 25. The fact that persons under 25 were excluded from jury service did not contravene the Equal Protection Clause of the 14th Amendment. Hunt v. State, 12 Md. App. 286 (1971); and the fact that some jurors were under age did not invalidate a verdict or indictment unless the defendant was prejudiced thereby; Hollars v. State 125 Md. 367 (1915); Green v. State 59 Md 123 (1882). The provisions providing for different ages is merely directory.

Section 8-106 (p. 5) combines the compensation provisions presently appearing in §12 and §19 of Article 51, and in the public local laws of several counties. These provisions have been arranged by county to allow for easy amendment. Consideration was given to arranging these provisions by judicial circuit, however

the idea was abandoned. Often different counties in the same circuit have different compensation provisions.

This section sets forth the "actual practice" regarding juror compensation, and includes all relevant public local law provisions still followed in this area, with the possible exception of Frederick County. Article 51, §19 provides that jurors in Frederick County receive the mileage allowance set by the county commissioners, while the public local law provides 7 1/2 cents per mile. The staff has been unable to determine whether this is paid under the authority of §19 or the public local law. The Article 51 provisions was retained as it is somewhat broader. Other public local laws dealing with juror compensation should be repealed; see further discussion of the problem of public local laws on pp. 8 -10 of this report.

Jurors in the 7th circuit receive "expense money" in lieu of "compensation". This apparently circumvents federal regulations which requires a federal employee to pay over to the government all "compensation" received from outside sources. The regulation apparently exempts reimbursement for "expenses". Other counties may wish to follow suit.

In §8-107 (p. 11) the language has been modernized by exempting a court which excuses a jury and directs them to return on a certain day from the mail-notice requirement. Other methods of notification are allowed if permitted by rule of court.

Subtitle 2 - Juror Selection

Article 51, §4 has been divided into separate new sections, §8-201 through §8-204.

Section 8-201, (p. 12) is presently subsection (a) of Article 51, §4. It is the operative section, requiring each county to have a plan for random jury selection. Since all counties currently have plans in operation, the duty to "devise" a plan has been changed to a duty to "maintain" it in operation.

Section 8-202, (p. 13) presently subsection (b), explains the provisions of the plan required under §8-201.

Section 8-203, (p. 17) provides for modification of the plan, either by the circuit court, or by order of the Court of Appeals. Because present subsection 4(c) is deleted a new subsection, §8-203(c), was added to make clear that if a new county is created, it will be required to get Court of Appeals' approval of the plan, and to cover any problems that might arise if a county decided to abolish its present plan in its entirety and adopt a new one.

Many public local laws are superseded by the juror selection plans and should be repealed. All counties follow the juror selection plans rather than their public local laws.

In §8-206, (p. 20) the duty of the clerk to note on the juror qualification form any additional information acquired during an interview with a prospective juror is made mandatory, rather than permissive, in light of the policy of the title to have as much information available as possible about a prospective juror, and to make the working conform to §8-208 and §8-210 which require notation.

Section 8-207(a) (p. 22) is reworded to make clear that the only grounds for disqualifying a prospective juror are those listed in the section.

It should be noted that §8-207(b)(8) (p. 24) contains a requirement that jurors be at least 21 years old. See discussion supra.

In §8-208, (p. 2) the reference to certified mail is deleted. Article 1, §20 defines registered mail as including certified mail. Although other sections which refer to mail do not require registered mail, this section deals with service of a summons and therefore the registered mail requirement was retained to conform to the Rules pertaining to service of summons and process. The other references to mail are merely notice provisions, and there is no reason to require registered mail in those cases.

Subsection (c), deals with summoning "talesmen" and presently appears as §9(e) of Article 51. The Commission recommends repeal of Article 75, §48 which is similar to §8-208(c). It provides for special juries to be summoned for trials of removed cases. The substance of that section appears in subsection (c). See further discussion, infra.

Section 8-210 (p. 28) is revised to separate the grounds for excuse from service generally and those for excuse from a particular jury. The Commission decided, pursuant to a subcommittee recommendation, that it was unnecessary to use the word "exclusion" because the grounds for exclusion under the present law are actually reasons why a prospective juror may be excused from the jury in a particular case.

It should be noted that remedies for non-compliance with this title contained in §8-211 (p. 32) are exclusive, and except for constitutional questions do not constitute grounds for post conviction relief, even though the defendant failed to discover non-compliance with the selection procedures until after his conviction. In practice, however, a post conviction appeal under this section would probably include constitutional questions, mitigating the effect of the section. There is a gap in the section dealing with remedies where a grand jury is selected in violation of §8-103.

Subtitle 3 - Petit Juries

Section 8-301 (p. 38) provides that where a party neglects or refuses to strike, or where more than the required number of jurors remain on the list after all strikes have been made, the court may strike the excess names. No reference is made to the size of the jury, as in practice, with the consent of the parties, six person juries are sometimes used, and the legislature may, in the future, authorize six person juries in some cases. This section is essentially procedural

While the reasons for the adoption of 28 Edward III c.13 have long been forgotten, and while the concept of a jury of aliens seems anomalous today, the Commission believes that to be on the safe side, if Article 51, §18 is repealed, the English statute should also be repealed.

The Commission feels that Article 51, §20, providing that the grand jury for each county reports on the condition of the jails therein, should be reallocated to some other article, perhaps local government or criminal law. The section is somewhat similar to Article 27, §703, and may be temporarily recodified as Article 27, §703A.

Article 75, §48 is recommended for repeal. The section which deals with special panels of talesmen to try removed cases is no longer used in practice. In substance, it duplicates §8-208(c) which applies to all cases. Furthermore, it is not clear whether jurors selected "from the community at large" under this section are to be selected "at random," in accordance with the policy of this title. Since this section is merely discretionary, and since the power to summon additional jurors is given elsewhere in this title, the section should be considered for repeal.

The following British Statutes should be repealed because they conflict with, or are covered by sections in title 8; See pages 44 - 55 of redraft and notes therein: 35 Henry 8, c.6 (1543); 4 and 5 Phillip and Mary c.8 (1557); 14 Elizabeth c.9 (1572); 6 and 7 William and Mary c.4 (1694); 5 Henry VI c.6 (1513); 33 Edward I stat. 4 (1305); 28 Edward III c.13 (1354).

Omissions

There are no provisions in title 8 concerning the swearing of either grand or petit jurors, or the requirement that grand jury proceedings be conducted in secrecy. The Commission believes that juror's oaths derive from the common law of England, as do most of the provisions governing grand juries and that they are not dealt with by statute.

None of the powers of the grand jury are included in this title. The Commission decided to place these provisions with the "substantive" provisions to which they pertain.

Public Local Laws

There are a number of inconsistent public local laws dealing with juror selection which the Commission believes obsolete and appropriate for repeal. These provisions either conflict with, or duplicate Article 51, the Maryland Rules, or the Juror Selection Plans. A table of these sections is attached.

The sections which conflict were originally enacted in the 1890's in response to Article 51 of the Code of 1888, and have continued in effect, largely without amendment or revision, until the present. These sections typically provide that jurors are selected from a list of male taxables at least 25 years old, and shall be apportioned among the election districts of the county. Most of these public local laws also provide that jurors "shall be selected with special reference to their intelligence, soberiety and integrity." These statutes clearly violate the policy of random selection behind the present Article 51, as well as specific provisions of the article and the juror selection plans.

Those provisions which merely duplicate Article 51 should be repealed to avoid confusion which undoubtedly will arise in the future if Article 51 is amended without also amending the public local laws. The statutory cross-references in many of the public local laws still refer to sections of the 1888 Code.

An example of this confusion can be found in the area of juror compensation. In Garrett County, for instance, the public local laws provide that jurors receive \$3.50 per day compensation and 12 1/2 cents per mile, for traveling to and from court once each term; Article 51 provides \$10 per day and 10 cents per mile. The

Garrett County Code provides that when its provisions and those in Article 51 conflict, the local law controls. (Garrett County actually follows Article 51 exclusively, as do most counties.)

In Frederick County, however, the local law provides for \$8 per day and 7 1/2 cents per mile, while Article 51 provides \$15 per day, and mileage as set by the County Commissioners. Frederick County apparently follows both the general and local laws in part, paying jurors \$15 per day and 7 1/2 cents per mile.

In Kent and Queen Anne's, jurors are paid the compensation provided in Article 51, plus the mileage allowance, and overtime pay provided in the local laws.

Article 1, §13 provides that when public local and public general laws conflict, the public local laws prevail unless the language of the general law indicates either expressly or by necessary implication a purpose to repeal inconsistent local laws. Repeals by implication are not favored, and local laws are not repealed by general laws unless such a legislative intent is clearly indicated.

In the area of juries this problem is of minimal significance since ch. 408, Acts of 1969 §4, clearly expresses a legislative intent to repeal "all other acts or parts of acts including portions of the several codes of public local laws" to the extent of any inconsistency. It would, nevertheless, be wise to specifically repeal these local sections to avoid any possible doubt as to their status. Of course those sections which duplicate Article 51 were not repealed by ch. 408.

In the table, sections of the revised juries article and of the juror selection plans are listed in the columns' headed "superseded". Many of the local sections are actually superseded by several sections of both the statute and the plans. When this occurs, one or more of these sections are listed.

The statutes dealing with jury terms of court have generally been superseded by the rules of the circuit courts.

The Commission believes it has collected all the public local law sections dealing with juries and terms of court. These sections are sidely scattered throughout the codes. The Legislative Council and the county delegations are urged to bring any additional sections to our attention.



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